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C O N F I D E N T I A L SECTION 01 OF 04 DILI 000112

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SUBJECT: TRUTH AND FRIENDSHIP COMMISSIONERS PUSH FOR ACCESS TO SCU DOCUMENTS

REF: A) 2005 DILI 493, B) DILI 84

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CLASSIFIED BY: Grover Joseph Rees, Ambassador, Embassy Dili, State.
REASON: 1.4 (b), (d)

Summary

1. (C) The bilateral Indonesia-East Timor Truth and Friendship Commission (TFC) has made a surprise request for full access, with necessary redaction to assure witness confidentiality, to the files of the Serious Crimes Unit (SCU). After Prosecutor-General Longuinhos Monteiro refused the request, the TFC sent letters to President Xanana Gusmao and UN Special Representative of the Secretary-General (SRSG) Sukehiro Hasegawa requesting access. TFC Co-Chairman Dionisio Babo justified this request by stating that documents such as the records from the Indonesian Human Rights Commission (KOMNAS HAM) and the Commission on Truth and Reconciliation (CAVR) will be useful in completing the TFC's final report, but are not "judicial documents" and thus cannot be relied upon to provide precise factual evidence such as that found in the SCU documents. Babo also gave his impressions of the TFC's visit to East Timor, stating that the commission's plenary meetings during the visit were productive in establishing the criteria for selecting the priority cases that the TFC will investigate. A visit to the site of a 1999 massacre in Liquica in 1999 reportedly served as an eye-opening experience for the Indonesian Commissioners. Babo did indicate, however, that certain Indonesian and Timorese members of the Commission are becoming easily influenced by political pressures from outside and are thus less rigorous and thorough in their quest for truth. Finally, the Co-Chairman discussed the February 22 Bali meeting between the Presidents of East Timor and Indonesia, indicating that the two Presidents discussed the issue of amnesty for 1999 criminals, a possible extension of the TFC, and the relationship between the eventual report of the TFC and that of East Timor's domestic CAVR. End Summary.

Access to SCU Documents Requested

2. (C) EmbOffs met with TFC Co-Chairman Dionisio Babo to hear his impressions of the weeklong visit of the Indonesian members of the Truth and Friendship Commission. He stated that one of

the disappointments of the trip was that the TFC was not granted access to the SCU files, currently being held by the Prosecutor-General's Office under the supervision of the sole remaining UN advisor to the SCU (see reftel A). The initial request for access to these documents was made to Prosecutor-General Longuinhos Monteiro in a meeting with the full TFC membership. Acting consistent with his promise to bar inappropriate access to the SCU files, Longuinhos deferred the request to President Gusmao and SRSB Hasegawa stating that a long-awaited formal handover of the SCU files (see reftel B) had yet to take place and that he was therefore not in a position to grant such access. Frustrated, the Commissioners drafted a letter to President Gusmao and SRSB Hasegawa requesting that the GOET and the UN come to a decision about who has definitive control of the files and to grant access to the TFC.

13. (C) After EmbOff expressed concerns about witness confidentiality were the TFC given full access to the files of

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the SCU, Babo assured EmbOff that the TFC would follow proper witness-protection procedures and ask that the documents be redacted before being handed over to the TFC. He noted that court documents from the Court of Appeals concerning serious crimes appeals cases had been appropriately redacted before they were given to the TFC. When asked why the TFC would need to have access to the SCU evidentiary files given the availability of the documents from KOMNAS HAM, the indictments and other official court documents from the Special Panels on Serious Crimes, and the newly release extensive CAVR report, Babo asserted that only the SCU files provide "factual and judicial" reports of the violence which took place in 1999. He stated that the other documents would be useful in preparing the TFC's final report, but that the evidence obtained while conducting the high-quality SCU investigations must be made available to the TFC for the body to have a complete factual background of each case. In addition, Mr. Babo noted that in any case in which amnesty would be recommended, he would want such a recommendation to be based on documents created by a "judicial or legal body" rather than those from CAVR and KOMNAS HAM.

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Plenary Meetings Lead to Criteria for Priority Cases

14. (SBU) Co-Chairman Babo reported that the two days of plenary meetings held in Dili were productive and allowed the Commissioners to establish criteria for assigning priority to cases to be handled by the TFC. The criteria adopted include the number of times a case is mentioned in KOMNAS HAM, Jakarta Ad Hoc Tribunal, CAVR, and SCU documents; whether the event received international attention; whether the event is publicly remembered on an annual basis; the number of people killed; the implication of involvement by high level officials or institutions; whether the case resulted in mass exodus, and whether the case involved sexual violence. Babo stated that nearly all "priority cases" are likely to mirror the cases found in the KOMNAS HAM report, with the few additional cases pertaining to sexual violence being selected from CAVR and SCU documents.

15. (SBU) Apart from meeting with senior GOET officials and holding plenary meetings, the full TFC membership conducted a site visit to a church in Liquica, a town 30 minutes from Dili where in 1999 scores of Timorese were massacred by anti-independence militias with the assistance of Indonesian police and military officers. The group spent two hours in the church listening to an account of the massacre; this session was followed by a three-hour meeting with friends and relatives of the victims. Babo noted that several of the Indonesian Commissioners were visibly moved by the site visit and appeared to have a newfound understanding of the magnitude of the 1999 atrocities. Later in the week Antonius Sujata, an Indonesian alternate member of the TFC, commented to EmbOff that the trip had given context to the atrocities and provided him with a more

vivid understanding of the impact of the massacre beyond the loss of the victims' lives. According to Babo, the Indonesian members were unwilling to undertake any additional journeys outside of Dili, citing what they described as the restricted mobility of several elderly Indonesian commissioners.

Commissioners on both sides influenced by pressure from Jakarta and Dili

16. (C) Apart from the chronic complaints about the lack of attention given to the TFC by the Indonesian members, all of who continue to hold other positions that take up most of their time, Mr. Babo noted that political pressures appear to be weighing heavily on certain commissioners, both Timorese and Indonesian. Babo and other legally trained members of the TFC appear genuinely dedicated to ensuring that the Commission's report is compiled using sound ethical guidelines, following appropriate legal processes, and including a thorough and accurate statement of the facts. Babo indicated, however, that due to political loyalties in Jakarta certain Indonesian members of the Commission want to "wrap up" the TFC's work as quickly as possible.

17. (C) Babo provided an updated assessment of the Indonesian commissioners' approach to the TFC. General Widjojo, heavily influenced by TNI leadership and said to have direct access to President Yudhoyono, appears to favor a cursory report including a blanket recommendation of amnesty, not only for individuals but for entire institutions including all their members, without requiring those individuals to meet any pre-determined criteria. Benjamin Mangkoedilaga, according to Babo (please strictly protect), appears to be somewhat senile and not interested in discussing details. Wisber Lois, a former diplomat, is reported to be providing information to and taking cues from various groups within the Indonesian Ministry of Foreign Affairs. Babo told Emboffs the two remaining Indonesian Commissioners, Bishop Petrus Turang of Kupang and Achmad Ali, are very supportive of a genuine search for truth, often siding with Babo and the Timorese members on key issues. The alternates are also an important factor in the process. The three alternate Indonesian commissioners are all reported to be very pro-truth and attend all of the TFC's meetings. Babo and other East Timorese commissioners have frequently mentioned that the TFC operates more as a body with 16 members than one with 10 members and six alternates. The important difference, however, is that the alternates do not vote on decisions unless a permanent commissioner is absent.

18. (C) Some of the Timorese commissioners are reported to be responding to political pressure from Dili. Although he would not provide names, Babo indicated that certain Timorese

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commissioners appeared far more concerned with finishing the report quickly and in a way that would please senior GOET officials than in completing a well-investigated and definitive report. Babo states that these tendencies are most apparent in those who do not have secure positions to return to in Timor or those who may have political aspirations. The Co-Chairman indicated that these Timorese commissioners often vote with the more pro-GOI Indonesian commissioners, thereby swaying the balance of the TFC dangerously away from that of a serious truth-seeking body.

Issues of amnesty and report deadline raised with SBY and Gusmao

19. (C) Co-Chairman Babo participated in a series of meetings during a summit held between Presidents Yudhoyono and Gusmao at the Presidential Palace in Bali on February 22. Babo asserts that during these meetings President Gusmao was able to persuade SBY that the CAVR report was merely a domestic Timorese document, and should not be regarded as inconsistent with the TFC process. SBY, surrounded by senior military brass, said

that GOI would regard the eventual report of the TFC as the definitive history of the 1999 atrocities, because the TFC report would be completed jointly by the two nations in contrast to the CAVR report which is an entirely Timorese document,

¶10. (C) Babo took the opportunity of this meeting with the two Presidents to request the heads of state take action on two issues critical to the TFC. First, he reiterated the need for guidance on recommending amnesty. Babo says certain members of the Commission argue that the TFC should recommend amnesty to any individual or institution they see fit. Other commissioners, including himself, believe it is necessary to set minimum criteria, including that the accused individual fully disclose what he knows about the 1999 crimes, before the TFC can recommend amnesty. Babo is also opposed to recommending institutional amnesty, i.e. a blanket amnesty that would apply to all members of the TNI. Second, Babo requested that the two Presidents formally extend the TFC for a second year. Babo admitted that he doubts a meaningful report could be finished even within two years, but that an initial extension was an important first step and necessary to request financing for a second year. The Presidents reportedly indicated that they would ask their respective governments to address these issues and come to a joint decision.

Continued discussions on international patrons and advisors

¶11. (SBU) TFC Commissioners have long expressed the desire to have an international patron, a prominent figure in the human rights community, to both give advice to the TFC and also to enhance the Commission's legitimacy. During a recent meeting, the TFC identified four persons the two foreign ministries should attempt to recruit: Jimmy Carter, Nelson Mandela, Fidel Ramos and Rigoberta Menchu. EmbOff asked Babo about more technical, hands-on international advisors for the TFC. He stated that while the Indonesian members had agreed in principle to have such advisors, the issue remained very sensitive. According to Babo, it appears likely that any working-level foreign advisors would end up working only with the Timorese members. In separate conversations with Ambassador Rees, however, two Indonesian commissioners, General Widjojo and Indonesian Co-Chairman Mangkoedilaga, indicated that they were now communicating directly with the Carter Center in Atlanta about the possibility of the Center providing advisors to the TFC. They thanked Ambassador for the assistance provided by U.S. Embassy Jakarta in facilitating these communications. Finally, Babo noted that he had indicated to several foreign missions in Dili that these advisors would likely have to be funded bilaterally as the UN continues to oppose any involvement in the work of the TFC by UN personnel.

Comment

¶12. (SBU) Comment: Both the UN and GOET have denied ownership of the SCU files when doing so made for a politically easy way of deflecting difficult requests concerning the files. Although a memorandum of understanding governing access to and preservation of the SCU files has been pending since August 2005, the SCU files are located in the Prosecutor-General's Office and can be accessed if the remaining UN advisor approves Monteiro's request. Conversely, as the SCU itself was a domestic institution established by Timorese law, but staffed by UN employees, the UN argues that the files have always legally been

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the property of the GOET.

¶13. (SBU) Comment continued: Although redacting SCU documents is one possible method for making the files ready for use by the TFC, the fact that the remaining UN advisor is scheduled to depart in the coming months and that the Prosecutor-General's Office has extremely limited human resources, such a project would be a massive undertaking and one in which witnesses' identities could be disclosed inadvertently. Moreover, the SCU

files are stored in a sophisticated electronic database and trained staff members would need to perform any searches for the Commission, rather than simply surrender a pile of documents. Nevertheless, it is difficult to disagree with TFC Co-Chairman Babo's observation that the SCU files constitute the single most useful source of detailed information about particular crimes that were committed in 1999. If, as appears to be the case, the TFC is serious about looking at this evidence, it is important that the Prosecutor General have at least one international advisor to ensure that legitimate access does not compromise witness confidentiality. The Embassy and USAID are discussing with the Prosecutor General the possibility of including such an advisor among the 8 or 9 GOET advisors the U.S. will support with bilateral Economic Support Fund (ESF) contributions during the next year. It is also important that any international advisors provided to the TFC by the UN and/or bilateral donors include legal advisors who appreciate the importance of witness confidentiality and understand the technical aspects of ensuring

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such confidentiality.

¶14. (C) Comment continued: Prior to the conversations reported in this message, TFC Co-Chairman Babo had been far more upbeat than any of his Timorese colleagues in assessing the prospects for a thorough and honest TFC report. Although it is encouraging to hear that at least one Indonesian commissioner was genuinely moved by what he saw and heard at the massacre site in Liquica, the more important news may be that the commissioners are now seriously discussing a quick "wrap up" of their work and a recommendation of blanket amnesty. End Comment.
REES